

DUNCAN MILLER

IBLA 71-247

Decided June 1, 1973

Appeal from decision (M 17649 and M 17650) of Montana Land Office, Bureau of Land Management, requiring stipulations for oil and gas leases.

Vacated and remanded.

Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Consent of Agency

Where acceptance of special stipulations is requested by the Forest Service, United States Department of Agriculture, as a condition precedent to the issuance of an oil and gas lease on public lands, the case will be remanded to the land office to ascertain whether the Forest Service has a specific need for such special stipulations in addition to the standard stipulations and whether the special stipulations are reasonable.

Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Consent of Agency

Where special stipulations are imposed as a condition precedent to the issuance of an oil and gas lease on public lands, the stipulations become part of the lease and are binding to the same extent that the lease is binding and it is implicit that the lessee is responsible for the commissions or omissions of his authorized agent(s).

APPEARANCES: Duncan Miller, pro se.

OPINION BY MRS. LEWIS

Duncan Miller has appealed from a decision of the Montana Land Office, Bureau of Land Management, dated March 24, 1971, which required him to accept special stipulations 1/ imposed by the Forest

1/ These were in addition to the standard stipulations on Form 3109-3.

Service as a condition precedent to issuance of noncompetitive oil and gas leases under section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970), pursuant to his successful simultaneously filed offers M 17649 and M 17650 for parcels 133 and 134, respectively. The applicant was requested to execute a stipulation form MSO 3100-10 (March 1971) for each of his lease offers, which set forth the required stipulations.

On appeal, appellant states: "** * * the stipulations required should apply only to and specifically state as to where the Lessee was himself conducting the operation or authorized it."

The lands involved are in the Custer National Forest under the surface jurisdiction of the Forest Service, United States Department of Agriculture. The special stipulations required are:

1. The local District Ranger shall be informed and his approval of plans obtained in advance of any field operations, including seismic work, drilling, road construction, or other field operations that involve these lands.
2. Drilling for seismic shotholes will not be done within 1/8 mile of any spring or water well existing prior to the drilling operation.

In a recent case, Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972), the criteria governing the imposition of special stipulations on oil and gas leases of withdrawn public land were extensively reviewed. It was specifically noted that such stipulations are unacceptable where they have the effect of investing the field officials of another agency with authority either to disapprove the exercise of rights bestowed by the lease or where they allow the lessee to exercise those rights only under such additional terms and conditions as those officials may see fit to prescribe. In the instant case it would appear that Stipulation No. 1 falls squarely within that category.

The Miller case, supra, further held that special stipulations proposed by the Forest Service which are in addition to the standard stipulations on Form 3103-2 must be supported by valid reasons which will be weighed by the Department of the Interior with due regard for the public interest. The appropriate office of the Bureau of Land Management will ascertain whether a need exists for special

stipulations to protect or preserve some identifiable resource value or improvement on the land, and whether the proposed stipulations are reasonably suited to the need. In this context, Stipulation No. 2, supra, requires justification and further review.

With respect to the specific contention on appeal, viz., that the stipulations should apply only to where the lessee was conducting the operation or authorized it, and should so state, we find: Both standard and special stipulations, if agreed to, become part of the lease and are binding to the same extent that the lease is binding, as agreed in the offer (simultaneous oil and gas drawing entry card). Further, section 8 of the standard terms of the lease document provides that each obligation thereunder shall be binding upon the heirs, executors, administrators, successors or assignees of the parties to the lease. Accordingly, we find that it is clear to what extent a lessee is bound by the lease terms and by the stipulations and it is implicit that the lessee is responsible for the commissions and omissions of his authorized agent(s).

Therefore, in light of the discussion above, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of March 24, 1971, is vacated and the cases, M 17649 and M 17650, are remanded to the Montana Land Office, Bureau of Land Management, to ascertain whether the Forest Service desires to propose any special stipulations which meet the criteria set forth in Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972), and therefore must be agreed to by the appellant.

Anne Poindexter Lewis, Member

I concur:

Edward W. Stuebing, Member

Martin Ritvo, dissenting.

The majority opinion relies upon our recent decision in Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972), as justification for remanding this case. While the stipulations Miller objects to may fall within the scope of the general language of that decision, Miller here raised no sweeping objections to them but sought relief only on a very narrow ground. He does not complain of the reasonableness of or desirability of the two specific stipulations set out in his appeal. He only asserts that their effect should be limited to him or his agents. As the majority decision points out, the stipulations become part of the lease and apply to all who operate under it. Accordingly, it found Miller's contention without merit.

Since the stipulations are not invalid on their face and appellant objected to them only on a ground we have found unpersuasive, I find no necessity to expand the scope of this appeal. I would affirm the decision appealed from.

Martin Ritvo, Member

